

MARY A. RAMIREZ
Claimant

MODINE MANUFACTURING CO.
Respondent

SENTRY INSURANCE
Insurance Carrier

The respondent requests review of this determination alleging the ALJ exceeded his jurisdiction in finding claimant sustained an accidental injury while in respondent's employ, and that claimant's alleged accidental injury arose out of and in the course of her employment with respondent. Respondent maintains the ALJ's findings must be reversed as the evidence fails to establish a sufficient foundation upon which to find a compensable injury.

Claimant asserts the ALJ's preliminary hearing Order is sufficiently supported by the evidence presented at the hearing and should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On August 14, 2003, claimant was temporarily assigned to a job assembling portions of oil coolers. This job required her to assemble two or three of the items at a time, each weighing 3 to 5 pounds, and then move the group to a rack stored behind her for further processing. She was required to do this between 8 and 15 times an hour from 9:00 a.m. to 3:00 p.m. Other than the new work assignment, claimant testified that her shift was uneventful and she was unable to report a specific incident that caused her pain, nor suggest that she was injured in any way.

At the end of her shift, claimant went home and showered as she normally does. She did some light housework and spent the evening waiting to make a phone call to her sister. Claimant experienced no unusual symptoms or pains during the evening.

The next morning, August 15, 2003, she woke up and began to get ready for work. She noticed "extreme soreness" all around her lower back.¹ There was no soreness in her left groin or pelvic area. Rather, the discomfort was isolated in her low back and around to the hip area as if she had been exercising.² Claimant immediately believed this soreness was due to the previous days duties.

She reported to work at her normal job and completed her shift uneventfully. That evening, as she was showering claimant noticed a lump in her groin area.³ She called a coworker and was advised to call Karen Gentz, respondent's human resource person. Ms. Gentz directed her to rest during the weekend and on Monday, respondent would arrange for a medical evaluation.

On Monday, August 18, 2003, claimant was seen by Dr. Leighton E. Yorke who diagnosed an inguinal hernia. He referred her to Dr. Hicks, who concurred with that diagnosis. Claimant returned to work with restrictions until such time as surgery could be completed.

¹ P.H. Trans. at 9.

² P.H. Trans. at 10, 21.

³ P.H. Trans. at 10.

Before surgery could be done, claimant was interviewed by an insurance adjuster who concluded she was not entitled to benefits apparently because she could not identify any specific onset of pain other than the unusual work assignment occurring on August 14, 2003 and her subsequent discovery of the hernia the next day.

At the preliminary hearing, claimant confirmed that she had no specific incident of lifting on August 14, 2003 that caused her pain.⁴ She further testified that the lump or bulge she discovered on the evening of August 15, 2003 was definitely not present on August 14, 2003.⁵

There is no medical record that specifically addresses the causative aspect of claimant's inguinal hernia. There is an application for disability benefits that includes a question as to the relationship between the condition and claimant's work.⁶ Within this document, there is a check mark in the box that indicates "no" but that box has been scratched out and the box marked "yes" is checked. This error was apparently corrected by someone with the initials "JAB" and is the same person who applied Dr. Hick's stamped signature to the form. Other than claimant's testimony, this is the only reference within the medical records which speaks to the issue of causation.

The Board finds the January 23, 2004 Order should be reversed.

The Board concludes that claimant has failed to establish that the inguinal hernia she discovered on August 15, 2003 was more probably than not caused by her work activities on August 14, 2003. Other than the fact that she was assigned to a different job on August 14, 2003 that required her to repetitively lift 9 to 15 pounds of oil coolers onto a shoulder-high rack, there is no purported connection between work and the inguinal hernia she discovered the next day. Claimant did not experience any pain on August 14, nor did she discover any lump or bulge when showering that evening. She had no specific pain in that area and even the next morning, she describes low back pain that is generally associated with exercise. She worked her entire shift on August 15, 2003 and went home to shower. Only then did she discover the bulge in her groin area.

It may well be possible that an individual could suffer an inguinal hernia without any specific acute sense of pain and go on with normal activities without any adverse result, only to discover the bulge or lump at the end of the next day. However, based upon the testimony and evidence presented thus far, the Board is unable to make that evidentiary and medical leap. Accordingly, the Board finds the ALJ erred in finding claimant sustained

⁴ P.H. Trans. at 20.

⁵ P.H. Trans. at 24.

⁶ P.H. Trans. Ex. 3.

an accidental injury that arose out of and in the course of her employment on August 14, 2003. The ALJ's preliminary hearing order is, therefore, reversed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final subject to modification upon a full hearing of the claim.⁷

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated January 23, 2004, is reversed.

IT IS SO ORDERED.

Dated this _____ day of March, 2004.

BOARD MEMBER

c: Mary A. Ramirez, Pro Se
Brenden W. Webb, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-534a (2000 FURSE).